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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,871	10/31/2005	Hans-Juergen Weidemann	SOLEZ.P11	9321
28752	7590	10/07/2010		
LACKENBACH SIEGEL, LLP LACKENBACH SIEGEL BUILDING 1 CHASE ROAD SCARSDALE, NY 10583			EXAMINER KEENAN, JAMES W	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 10/07/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,871

Applicant(s)

WEIDEMANN ET AL.

Examiner

James Keenan

Art Unit

3652

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 and 45-124 is/are pending in the application.
- 4a) Of the above claim(s) 26-43 and 50-122 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 45-49, 123 and 124 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Claims 26-43 and 50-122 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/02/08.

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 1/16/03 (103 01 591). It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

Applicant's indication that an attempt has been made to obtain said document but that it can not be submitted is acknowledged.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-25, 45-49, 123, and 124 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the claims is indeterminate. Each of independent claims 1, 13, and 17 has been amended to recite "lifting devices (101, 111) anchored directly to the track bed" (quote from claim 1; substantially the same limitations are in claims 13 and 17). There are two species of lifting devices disclosed in the application: one (elements 101) is disclosed as "arranged secured to the track bed" (page 20, lines 36-37), while the

other (elements 111) is disclosed as extending "outside the rail tracks ... on a roadway ... secured to the ground adjacent to the track bed" (page 22, lines 1-4). It appears from applicant's parenthetical inclusion in the claims of element numerals 101 and 111, that the scope of the claims is intended to cover both species. However, the newly recited limitation noted above appears to provide support only for the first one of the species (101), unless the term "track bed" (which is not explicitly defined in the specification or shown in the drawings) is intended to include the roadway adjacent the tracks.

It is also noted that, as best understood, the recitation in claim 123 that the lifting devices are "based on the wedge principle" (which terminology is *per se* indefinite, as noted in a previous Office action) appears to be directed to the second one of the species (111). If this is correct, then it appears to provide evidence that the above-noted "track bed" limitation is not intended to preclude elements 111.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-25, 45-49, 123, and 124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer (US 4,522,546) in view of Glassmeyer (US 4,049,135) and one of Gebhardt (US 4,715,766) or Tanabe (JP 59-194938), all previously cited.

Note: this rejection is predicated on the assumption that the indefinite language noted above concerning the lifting devices being anchored directly to the track bed is not meant to preclude the lifting devices from being anchored to the ground adjacent to the rails.

Referring first to claim 13, Ringer teaches a method of transferring cargo between a train and a road vehicle or between first and second trains, by utilizing lifting devices 54 which are at least temporarily and indirectly "anchored" to the track bed, (note gripping jaws 45, col. 7, lines 30-36), comprising moving a first train with at least a first cargo-carrying car into an unloading position (col. 5, lines 9-28), using the lifting devices to lift the cargo off the car (col. 8, lines 10-21), moving the cargo transversely of the longitudinal plane of the car until it is no longer above the car (col. 5, lines 7-30), moving a second train with at least a second car into a loading position (col. 5, lines 1-3), and loading the cargo onto the second car of the second train by reversing the unloading steps (i.e., moving the cargo transversely over the second car and lowering it thereonto by means of the lifting devices).

Ringer does not teach that the car superstructure of the first car is separate from the car frame and is moved with the cargo to a corresponding car frame of the second car.

Glassmeyer shows a method of moving cargo containers from one vehicle to another, wherein one of the vehicles has a separate frame 12 and superstructure 16, and where in at least certain circumstances (e.g., fig. 2) the cargo and superstructure are moved as a unit to the other vehicle.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Ringer by utilizing a separate car superstructure movable with the cargo, as Glassmeyer specifically teaches that cargo can be transferred between vehicles with or without a separate vehicle superstructure.

Ringer, as noted above, shows the lifting devices indirectly rather than directly anchored to the track bed.

Gebhardt and Tanabe show similar loading/unloading devices which are "anchored directly to the track bed", i.e., adjacent to the tracks, which is believed to be within the intended scope of the claim language at least as interpreted in the manner discussed at length in par. 3 above, and in view thereof, it would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus and method of Ringer with such a feature, to provide a more permanent and secure mounting of the lifting devices.

Re claims 14-16, the cargo can clearly be transferred from the first car to the second car either while the trains are situated on adjacent tracks G' and G", or after the first train has left, and the second train has moved into the position vacated by the first train.

Re claims 1-12, the method could obviously be applied to a single car (i.e., unloading a car and the loading the same car with a different load) or separate cars (unloading a first car and then loading a second car with the load from the first car).

Re claims 18 and 19, Ringer shows positioning and leveling devices (figs. 5-7) as broadly recited.

Re claim 20, Ringer shows multiple lifting devices along the tracks.

Re claim 21, the lifting devices are hydraulic.

Re claim 22, the lifting devices interact with the underside of the cargo.

Re claims 23, 45-47, and 124, note motor-driven roller elements 58.

7. Applicant's arguments filed 6/23/10 have been fully considered but they are not persuasive. Although the examiner did generally agree in the 5/17/10 interview that claiming the attachment of the lifting devices to the track bed as being a direct and permanent attachment would define over the Ringer reference, no specific language was agreed upon. Further, defining over a single reference used in a rejection is not necessarily an indication of allowable subject matter. Further still, at the time of the interview, the examiner did not recognize the significance of the distinction between the two species of lifting devices and whether or not the claim language was intended to cover both.

8. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on Mon. - Thurs. The examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Keenan/
Primary Examiner, Art Unit 3652

10/01/10